

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSE STEFFEY)	
Claimant)	
VS.)	
)	
BUCKINGHAM PALACE)	Docket No. 202,928
Respondent)	
AND)	
)	
CNA)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer on April 16, 1998.

ISSUES

Although phrased somewhat differently in respondent's Application, the issues are, in effect, as follows: (1) whether claimant's alleged psychological condition arose out of and in the course of her employment; (2) whether medical expenses and temporary total disability resulted from an injury which arose out of and in the course of claimant's employment; and, (3) whether the Administrative Law Judge erred in awarding penalties against respondent for its failure to pay certain medical expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons explained below, the Appeals Board concludes that respondent's challenge to the order for temporary total disability and medical benefits does not raise jurisdictional issues and is not subject to review at this stage of the proceedings. The order for penalties, on the other hand, should be reversed.

The relevant circumstances begin with an earlier preliminary hearing order, one entered in June 1996. On June 17, 1996, the ALJ heard evidence that claimant had suffered an injury in the course of her employment as a result of an exposure to fumes. The ALJ ordered respondent to provide medical treatment "with Dr. Kenneth R. Holladay

and referrals, including Dr. Lida Osbern and Dr. H. William Barkman for diagnostic testing and treatment.”

After that preliminary hearing order, claimant received treatment and incurred medical expenses totalling slightly over \$30,000. Respondent paid part, but not all, of those expenses. Claimant made written demand and subsequently asked for a hearing to assess penalties. Claimant’s counsel also filed an Application for Preliminary Hearing to request additional medical treatment and for an order for temporary total disability benefits.

Respondent now argues that certain of the medical expenses were for a psychological condition not related to the injury. Other medical expenses were for physical conditions also not related to the injury. Respondent contends if claimant was temporarily totally disabled it was for conditions not related to the injury. Respondent presented these issues at a second preliminary hearing, the one subject to this appeal, held on April 13, 1998. The ALJ ordered respondent to pay the medical expenses, finding them all related to claimant’s compensable injury. The ALJ also ordered respondent to pay penalties of 10 percent on all medical bills unpaid as of 20 days after the claimant’s service of written demand.

Finally, the ALJ ordered respondent to provide additional medical treatment through Dr. Holladay and Dr. Menninger and to pay temporary total disability benefits for 36 weeks commencing July 21, 1997.

This appeal presents two types of orders. The order for medical treatment and temporary total disability benefits is a preliminary hearing order. A preliminary hearing order is subject to only limited review. The Board may consider allegations that the administrative law judge exceeded his or her jurisdiction. K.S.A. 1997 Supp. 44-551. Such allegations include those identified as jurisdictional issues in K.S.A. 1997 Supp. 44-534a. The Appeals Board has previously held that a finding that a psychological condition does or does not relate to the physical injury is not a finding as to a jurisdictional issue and is not subject to review on appeal from a preliminary hearing order. Cunningham v. Michael E. Michael, D.D.S., Docket No. 177,523 (April 1994). Similarly, the decision that medical expenses are or are not related to the compensable injury is not a decision on a jurisdictional issue and is likewise not subject to review on appeal. Accordingly, respondent’s challenge to those two findings will not be reviewed at this stage of the proceedings.

The order for penalties is considered a final order. Stout v. Stixon Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185, *rev. denied* 251 Kan. 942 (1992). In this case, the Board has concluded that the order for penalties should be reversed. The Board reaches this conclusion for two reasons. First, no decision was made at the first preliminary hearing as to the compensability of the psychological condition. The respondent there presented some evidence of prior anxiety attacks producing symptoms similar to those claimed from

the exposure to fumes. It did not, however, appear at that point the claimant was alleging psychological injuries as a result of the exposure to fumes at work. Second, the original Order of June 21, 1996, required treatment through a physician, Dr. Kenneth R. Holladay, who was claimant's family physician. Dr. Holladay treated claimant for conditions other than the work-related injury. The Board agrees with respondent's underlying assertion that any preliminary hearing order must be construed as an order for benefits relating to or resulting from the compensable injury. On the other hand, it is generally not up to the respondent, after an order has been entered, to pick and choose which treatment satisfies the requirement. In most cases, an order for treatment by a specific physician and his or her referrals would be adequate to support an order for penalties. This particular case is complicated by the above two factors and, for that reason, it was not clear what treatment was ordered and the Appeals Board does not consider an award of penalties to be appropriate.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order for temporary total disability and medical benefits as contained in the preliminary hearing Order of April 16, 1998, remain in effect as originally entered. The appeal as to those issues is dismissed. The order for penalties is reversed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. Pringle, Topeka, KS
Rex W. Henoeh, Lenexa, KS
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director